

ATTORNEY DOCKET NO: 82223-202

EXAMINER Shengjun Wang
ART GROUP 1617
APPLICANT Lorraine Mignault
SERIAL NO: 09/762,232
FILED August 4, 1999
FOR Topical Lotion Containing Oatstraw

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JAN 17 2005

Commissioner of Patents
Washington, D.C., 20231
U.S.A.

Dear Sir:

AFFIDAVIT

I, Lorraine Mignault, of Suite 3209-197C Victor Lewis Drive,
Winnipeg, Manitoba, Canada solemnly declare that:

1. I am the sole inventor of USSN 09/762,232, filed August 4, 1999 and entitled "Topical Lotion Containing Oatstraw".

2. My invention is an oatstraw extract prepared by magnetically treating water, steeping oatstraw in heated magnetically treated water, and filtering the extract to remove oatstraw particles, thereby producing an oatstraw extract which can be applied to the skin as a topical lotion or used as an additive or carrier for other products. The combination of the oatstraw extract in magnetically treated water has several surprising properties, including improved rate and depth of absorption when applied on the skin, as discussed in the affidavits executed by myself on October 8, 2002 and by Mr. Rick Green of POS on October 1, 2002 that were submitted for the examiner's consideration earlier.

3. Regarding the Weed reference, this reference teaches pouring boiling water onto dried oatstraw and then adding that "oats and all" to a larger quantity of water, such as to water in a bathtub or footbath.

4. My invention differs from Weed's teachings in several important ways:

(i) Weed does not teach or suggest the use of magnetically treated water but rather clearly teaches the use of tap water;

(ii) Weed does not teach filtering to remove the oatstraw particles, meaning that Weed does not teach an oatstraw extract but rather Weed teaches only an oatstraw bath; and

(iii) Weed does not teach using the oatstraw extract as a lotion, as an additive or as a carrier for other products.

5. In spring 2003, I followed the teachings of Weed. Specifically, I added boiling water to dried oatstraw that had been chopped and then added that to a bathtub filled with warm water. What I found was that the chopped oatstraw stuck to my body and had to be physically removed or picked off. Furthermore, the free oatstraw clumps had to be scooped out of the bathtub during the draining process to prevent clogging of the drain. In addition, the water in the bathtub left a sticky residue on the body which could not be removed simply by wiping or drying with a towel and in fact required subsequent rinsing under a showerhead to remove the residue. That is, this residual stickiness in the bathwater was independent and separate from the oatstraw clumps. Similar results would be obtained using the teachings of Weed for any body part, for example, in a footbath. That is, the clumps of wet oatstraw adhere to the body, including the feet and must be physically removed and the water in the bath leaves a sticky residue on the body parts exposed thereto, which is separate and independent from the oatstraw clumps.

6. My experiences following Weed led me to conclude that anyone following Weed would find the experience time-consuming, frustrating and in fact irritating to the skin due to the added effort necessary to remove the oatstraw clumps and residue, as discussed above. Given the difficulties associated with the removal of the oatstraw clumps and associated residue from my body as well as from the inner surfaces of the bathtub or waterbath, I can only conclude that when Weed states "oats and all" she is saying to the reader "I know the oatstraw is messy, but it is necessary". This teaches that the oatstraw clumps are needed in the water and teaches against filtering.

7. Magnetization or magnetic treatment of water is believed to improve the ability of the water to "hold" other compounds. That is, magnetically treating water improves the solubility of water so that higher concentrations of compounds or solutes can be held in solution. In my invention, the magnetic treatment or magnetization of the water results in more of the oatstraw extract remaining in solution and also eliminates the sticky residue associated with oatstraw baths. The combination of the oatstraw extract in magnetically treated

water also has improved application and absorption characteristics compared to extracts prepared in deionized water as described in my previous affidavit and as supported by the affidavit filed by Mr. Rick Green.

8. The examiner's comments regarding the requirement for minerals in the magnetically treated water and that the use of magnetically treated water would be obvious to anyone wanting "cleaner" water are not understood.

Specifically, regarding the presence of minerals in magnetically treated water, it is noted that as discussed above, minerals may be more readily dissolved in magnetically treated water as may any water-soluble compound added to magnetically treated water. However, the magnetization process is believed to act on the water molecules themselves and not only on minerals or other compounds in the water. As such, the specific mineral content of water prior to treatment is not critical to the magnetization process. Following magnetization, the water will be able to "hold" more solutes than prior to treatment, regardless of the mineral content of the water. Furthermore, I believe that steeping oatstraw in any magnetically treated water, regardless of mineral content thereof, would have improved spreading and absorption properties, including enhanced smoothness, softness and moisturization compared to an oatstraw extract prepared in the same water without magnetization.

Regarding "cleaner" water, it is noted that magnetically treating water as taught by Ito might result in "clearer" water in that more sediment would be dissolved in the Ito-treated water compared to untreated water, but it is not clear that that makes that water "cleaner".

It is also noted that the examiner has previously implied that the benefits of magnetically treating water were controversial at best but has now taken the position that the use of magnetically treated water would be obvious.

Regarding this point, it is again noted that Mr. Rick Green of POS also believed that the type of water used would not make a difference in my invention and prepared samples of oatstraw steeped in deionized water. As discussed in my earlier affidavit and in his affidavit, the differences in the properties of the extract were readily apparent. Specifically, the extract prepared in deionized water did not spread as easily and was not as readily absorbed among other differences discussed in greater detail in the earlier affidavits.

Oatstraw extracts have also been prepared in tap water, and similar results were observed as with the deionized water. That is, greater effort was

required to spread the extract onto the skin, and the extract was not as readily or as quickly absorbed. Furthermore, the tapwater extract also left a residual stickiness.

It is noted that Weed teaches the use of tap water and that deionized water is the standard used in industrial applications. Oatstraw extracts made using tap water or deionized water both had less desirable characteristics compared to the oatstraw extract prepared with the magnetized or magnetically treated water. Deionized water is considered to be cleaner water than tap water and as discussed above is the "industry standard" and yet the extract prepared in the deionized water did not have the same properties of absorption and "feel" as the extract prepared in magnetically-treated water.

9. The combination of the oatstraw extract prepared in magnetically treated water has improved ability to retain nutrients from the oatstraw, spreads more readily when applied to the skin, absorbs more quickly and deeply, has enhanced smoothness, softness and moisturization and lacks the sticky residue associated with the extract when prepared with non-magnetically treated water, whether tap water or deionized water. These results are surprising as evidenced by the fact that Mr. Green believed that deionized water would be the same as magnetized or magnetically treated water in my invention. As discussed above, that was found not to be the case.

10. The fact that there was no residual tackiness led to my realization that the oatstraw extract in magnetically treated water could also be used as a carrier or additive with other products because benefits from the oatstraw extract were long-lasting and independent of the presence of the oatstraw clumps and the use of the magnetically treated water removed residual "stickiness" or tackiness from the extract. Presence of oatstraw clumps or sticky residue would have led to clumping or precipitation or other problems when the extract was added to other compounds.

11. In summary, as discussed above, my invention differs from Weed's teachings in several important ways:

(i) Weed does not teach or suggest the use of magnetically treated water but rather clearly teaches the use of tap water. As discussed above, the use of magnetically treated water results in an oatstraw extract that has improved properties compared to an extract prepared in tap water, such as improved rate and depth of absorption and no residual stickiness.

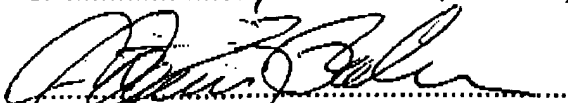
(ii) Weed does not teach filtering to remove the oatstraw particles, meaning that Weed does not teach an oatstraw extract but rather Weed teaches only an oatstraw bath. As discussed above, Weed teaches that the bath must contain "oats and all". The problems and limitations with this approach are discussed above.

(iii) Weed does not teach using the oatstraw extract as a lotion, as an additive or as a carrier for other products. That is, the oatstraw particles taught by Weed would clump and be unsuitable for use in combination with other products. Furthermore, even simply filtering to produce an extract (which Weed does not teach or suggest) would still produce an extract with residue problems as discussed above which could cause clumping or precipitation of other components of the mixture.

12. Thus, it was my discovery that the combination of an oatstraw extract in magnetically treated water retained the positive benefits of an oatstraw bath without the drawbacks of the oatstraw bath (discussed above) and had improved properties of absorption and "feel" (discussed above) that led me to realize that in addition to use as a body lotion (not taught by Weed), the oatstraw extract could also be used as a carrier or additive with other compounds.

13. I declare that all statements made therein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the instant patent application or any patent issuing therefrom.

SWORN before me at, WINNIPEG, MANITOBA
, this 11TH day
of FEBRUARY, 2005.)


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